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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 JUAN CARLOS VILLEDA,

12 Petitioner,

13 v.

14 K. SEIBEL,

15 Respondent.
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NO. SACV 15-2050-SJO (AGR)

ORDER ACCEPTING FINDINGS
AND RECOMMENDATION OF
UNITED STATES MAGISTRATE
JUDGE

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18 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the other
19 records on file herein, the Report and Recommendation of the United States
20 Magistrate Judge and Petitioner's Objections. Further, the Court has engaged in
21 a *de novo* review of those portions of the Report and Recommendation to which
22 objections have been made. The Court accepts the findings and
23 recommendation of the Magistrate Judge that the petition is wholly unexhausted
24 because Petitioner has never presented any of his grounds for relief to the
25 California Supreme Court. Federal habeas relief is not available for unexhausted
26 grounds. 28 U.S.C. § 2254(b)(1)(A).


27 After the magistrate judge issued her Report and Recommendation, the
28 Ninth Circuit issued its decision in *Mena v. Long*, 813 F.3d 907 (9th Cir. 2016). In

1 *Mena*, the Circuit clarified that a district court has authority to stay habeas
2 petitions that are wholly unexhausted notwithstanding any "stray language" in
3 *Rasberry v. Garcia*, 448 F.3d 1150 (9th Cir. 2006). *Mena*, 813 F.3d at 912 & n.3.

4 In light of *Mena*, Petitioner may file a motion for a stay of his federal
5 habeas petition while he exhausts his claims before the California Supreme
6 Court. To obtain a stay under *Rhines v. Weber*, 544 U.S. 269 (2005), a petitioner
7 must show that he had good cause for failing to exhaust claims in the California
8 Supreme Court, that his claims are "potentially meritorious" and that he has not
9 engaged in intentional delay tactics. *Id.* at 277-78. Alternatively, Petitioner may
10 seek a stay under *Kelly v. Small*, 315 F.3d 1063 (9th Cir. 2003). Petitioner should
11 promptly initiate exhaustion proceedings in the state court without waiting for a
12 ruling from this court on his motion for a stay. To do so, Petitioner may file a
13 state habeas petition before the California Supreme Court that contains his
14 grounds for relief.

15 If Petitioner wishes to seek a stay, Petitioner must file a motion for stay of
16 proceedings on or before **May 26, 2016**. If Petitioner does not timely file a motion
17 for stay of proceedings, the Petition will be dismissed without prejudice as wholly
18 unexhausted.

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20 DATED: April 27, 2016.

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23 S. JAMES OTERO
24 United States District Judge
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